IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.229 OF 1990

The State of Maharashtra .. Appellant

versus

Anant Yashwant Prabhu Ajgaonkar

& 7 ors. .. Respondents

...

Mr.Satpute for the appellant.

None for the respondent.

CORAM : V.M. KANADE, J

DATED : 29th November 2004.

P.C:-

1. Heard Shri Satpute appearing on behalf of the appellant and None appears for the respondent.

2. The appellant has preferred this appeal against the judgement and order passed by the Judicial Magistrate First Class, Vengurla in R.C.C no.50 of 1985. By the said judgement and order dated 15th

December 1989,the trial Court acquitted the accused of the offences punishable u/s.135(1)(b) of the Customs Act r/w notification no. 17/55 issued u/s.3 and sec.4A of the Imports and Exports Control Act. 1947.

3. The prosecution case is that on 28th February 1983, the Superintendent of Customs, Shore guard Vengurla received information that certain contraband would be unloaded at Tak sea shore near Vengurla. Accordingly, he directed the Inspector of Customs, shore guard to visit the site along with the patrol party. Accordingly, Inspector of Customs along with the raiding party went to the Tak sea shore and noticed a truck on the sea shore. The patrolling party raided the truck and one of the sepoys fired two rounds in the air as a result of which people who had gathered near the truck ran away. After the search of the truck was taken, they noticed several packages containing contraband goods. Similary, several packages were found along with on the ground near the truck and on the seashore. Accordingly, the truck and the contraband was seized. The owner of the vehicle - accused no.2 was arrested and thereafter the other accused were also arrested. The trial Court acquitted all the accused.

4. Against the said judgement and order, the State has preferred an appeal.

5. It is an admitted position that one of the witnesses have seen the accused while they were transporting the gods to the truck. The complainant CRS Rao also does not have knowledge about the incident. M.S. Jadhav, Inspector of Customs who had gone along with the raiding party to the seashore has admitted that he did not carry a torch with him. The patrolling party also did not have a search light. Further, it is admitted that M.S. Jadhav and his men could not apprehend any person on the sea shore as the accused ran away after two shots were fired in the air by one of the Sepoys. The prosecution also has not examined any independent witnesses. Further, Shri M.S. Jadhav in his cross examination has admitted that the panchnama was not recorded at the place of the offence but was recorded in the Customs office, Vengurla. Further, one of panch witnesses have been examined. It has further come on record from the evidence of M.S. Jadhav that goods were attached as unclaimed property and the goods were not found in possession of the accused.

6. The only other piece of evidence on which

reliance was placed by the prosecution was the statement which was recorded by the Customs Officer u/s.107 and 108 of the Customs Act. The prosecution however, has not produced these statements which were allegedly recorded by them. No explanation has been given by the prosecution for non production of these important statements. Apart from that, there is no evidence to show that the summons which is required to be issued u/s.108 of the Customs Act was infact served on the accused. The trial Court therefore, in my view has therefore, rightly come to the conclusion that these statements were therefore recorded under duress.

7. In view of these lacunaes in the prosecution case, I do not see any reason to interfere in the order passed by the trial Court. The reasoning of the trial court also accordingly to me is not perverse or unreasonable.

8. Appeal is therefore, dismissed.

V.M.KANADE, J